IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.1322-23/2006

Ms.Manmohan Kaur & Anr. .....Petitioners
! through: Mr.Arun Kumar, Adv.

VERSUS

$ Shri Dalbir Singh Vohra & Ors. .....Respondents
^ through: Mr.J.S.Vohra, respondent No.2 in person.
Mr.H.S.Arora, Adv. for respondent No.3.
Mr.C.P.Joshi, Adv. for respondent No.4.

% **D**ATE OF DECISION: 19-07-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. A short question arises for consideration, namely whether right to lead secondary evidence under Section 65 of the Indian Evidence Act 1872 pertaining to the contents of a document has to be a 2 stage trial or a composite trial.

2. Suffice would it be to note that pertaining to documentary evidence, primary evidence means the document

itself produced for the inspection of the Court. Secondary evidence pertaining to documents includes the copies made from the original by mechanical process. But, secondary evidence pertaining to a document can be led on the conditions specified under Section 65 of the Indian Evidence Act 1872 which require leading evidence pertaining to the existence of the document and thereafter the conditions or contents of the document.

3. The document in question is stated to be a will dated 17.12.1991. Defendant No.1 of the suit has staked a claim under the will. He says that the original has disappeared and is not to be found. His application for leading secondary evidence has been allowed.

4. Contention of the petitioner herein that a trial must be first held to establish that such a will existed and only thereafter orders could be passed, on proof of existence of the will, that contents thereof could be proved by secondary evidence. Said contention has not found favour with the learned Trial Judge who opined that this course of action would require trial to be held in 2 stages; it has been held that this procedure would unnecessarily delay the disposal of the suit.

5. Relevant clauses of Section 65 of the Evidence Act reads as under:-

"**65. Cases in which secondary evidence relating to documents may be given. -**Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power-

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,
and when, after the notice mentioned in Section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) .....

(e) .....

(f) .....

(g) ....."

6. Learned counsel for the petitioner relied upon the following authorities:-

(i) AIR 1966 SC 1457, *The Roman Catholic Mission vs. State of Madras*.

(ii) AIR 1916 All. 244, *Jaspat Rai & Anr. vs. Devi Dayal &*

Ors.

(iii) AIR (33) 1946 Privy Council 24, *Babu Anand Behari Lal vs. M/s.Dinshaw & Co., Bankers Ltd., Lucknow*.

(iv) AIR 1959 Andhra Pradesh 568, *Smt. Bobba Suramma vs. Smt. Peddireddi Chandramma*.

7. Learned counsel for respondent No.1 has cited no authorities.

8. I need not note the facts in dispute in the 4 captioned authorities for the reason each decision was on its own facts and each decision was at the appellate stage where secondary evidence had already been led. Issue considered in each authority was as to how the secondary evidence had to be evaluated pertaining to the contents of a documents. The view taken in all the authorities is the same. View is that before secondary evidence pertaining to the contents of a document can be looked into, the Court has to satisfy and record a prior finding that there is sufficient and satisfactory evidence to hold that the document in question did exist.

9. As I understand the law, where original of a document is not produced, its existence must be established by external evidence and on satisfying itself that the document existed, can alone the Court evaluate secondary evidence pertaining to the

contents of the document. To put it differently, existence of a document, original where is not produced, is a question of fact required to be proved as a question of fact. Issue regarding contents of the document is a separate and distinct issue required to be proved in the form of secondary evidence.

10. But, neither the language of Section 65 nor any judicial authority has truncated Section 65 as requiring a 2 stage trial; stage one being production of evidence to prove the fact that the document in dispute existed followed by a second stage trial, upon stage one succeeding.

11. The contrary view would obviously entail a delay in the trial.

12. Choked and overburdened with docket explosions, Courts in India must find procedural ways and means to fast-forward and accelerate adjudication of disputes. If view propounded by the petitioner is accepted, it would impede speedy trial.

13. Before concluding, I may note that no valuable right of the petitioners has been infringed by the order impugned which has clearly recorded that the Court would firstly consider, after evidence is led, where there is evidence on record to establish that a will in original existed.

14. The petition is without merits.

15. Dismissed.

16. No costs.

July 19, 2007 **PRADEEP NANDRAJOG, J.**
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